IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 5144 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JAGMOHAN B ROONGATA & 1 - Applicant(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR TUSHAR MEHTA for Applicant(s) : 1 - 2.
Mr. KT Dave, Addl. PUBLIC PROSECUTOR for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 13/09/2007
ORAL JUDGMENT

By way of this application under Section 482 of the Criminal Procedure Code the applicants, original-accused have prayed for an

appropriate order to quash and set aside the/home/rmr/scr.a145707o2.sxw complaint being Criminal Complaint No. 661/1996 pending in the Court of learned Chief Judicial Magistrate, Amreli and order dated 5th July 1996 passed by the learned Magistrate, Amreli in the said complaint.

2. Though served nobody appears on behalf of the respondent original-complainant. Under the circumstances this Court has no other alternative but to proceed with the matter and decide and dispose of the same ex parte.

3. The complaint being Criminal Complaint No. 661/1996 came to be filed by the respondent No.2, original-complainant against the applicants in the Court of learned Chief Judicial Magistrate, Amreli, for the offences punishable under Section 406, 420 of the IPC alleging inter alia that the applicants have entered into one lease deed in favour of original-complainant in

respect of payment of Rs. 15,000 by way of deposit and Rs. 5000 towards licence, NOC expenses etc., and out of which Rs. 10,000 was paid as advance. The applicants did not act as per the lease deed dated 23rd September 1993 and therefore it is alleged that the applicants have committed offences under Section 406, 420 of the IPC. In the said complaint the learned Chief Judicial Magistrate by order dated 5th July 1996 issued summons upon the applicants under Section 406, 420 of the IPC and therefore the applicants have preferred the present application under Section 482 of the Cr.P.C. It is required to be noted that initially the applicant No.1 herein submitted an application for discharge before the learned trial Court, however the learned Magistrate, Amreli did not decide the same on merits and by order dated 29th March 1997 dismissed the said application as premature.

4. Shri Janak Raval, learned advocate appearing on behalf of the applicants has

vehemently submitted that the applicants have not committed the offences under Section 406, 420 of the IPC and the dispute which has been raised in the complaint is purely of civil nature and with a view to harass the applicants more particularly applicant No.1 who is residing at Mumbai the said criminal complaint has been filed. He has further submitted that even on bare reading of the averments and allegations in the complaint they do not disclose any offence under Section 406, 420 of the IPC. It is submitted that to continue the criminal case would be abuse of process of Court and unnecessary harassment to the applicants as civil dispute has been converted into criminal dispute. Under the circumstances it is requested to allow the present application and to quash and set aside the impugned complaint in exercise of powers under Section 482 of the Cr.P.C.

5. Shri KT Dave, learned APP has submitted that on bare reading of the averments and

allegations in the complaint it prima facie disclose commission of cognizable offence as alleged against the applicants and therefore it is requested to dismiss the present application more particularly when the application submitted by the applicant No.2 for discharge was dismissed earlier.

6. Heard the learned advocates appearing on behalf of the respective parties. It is required to be noted that the main allegation against the applicants is that the applicants entered into one lease deed with the original-complainant on 23rd September 1993 according to which Govind Oil Mill was given on lease to the original-complainant for a period of 3 years and for that the original-complainant paid Rs. 15,000 [Rs. 10000 towards deposit and Rs. 5000 towards licence, hypothecation expenses etc.] and thereafter the applicants have not acted as per the said lease agreement and did not hand over possession of the said Mill and therefore it is

alleged that the applicants have committed offences under Section 406, 420 of the IPC. Now considering the averments and allegations in the complaint it appears to the Court that by way of aforesaid complaint the original-complainant wants specific performance of the lease agreement dated 23rd September 1993 and the dispute involved is purely of civil nature. It is also averred in the petition that the original-complainant never turned up to take possession of the Oil Mill and did not act as per the terms and conditions of the lease agreement. Now, considering the averments and allegations in the complaint and even if they are presumed to be true on their face value,no case is made out for the offence under Section 406, 420 of the IPC as alleged in the complaint. As observed above, the dispute is of civil nature and the civil dispute is converted into a criminal dispute. Under these circumstances, to continue the present proceedings would be abuse of process of Court and unnecessary harassment to the applicants.

Hence this is a fit case to exercise powers under Section 482 of the Cr.P.C., as the case squarely falls within the parameters of exercise of powers under Section 482 of the Cr.P.C.

7. For the reasons stated above, the application succeeds. The complaint impugned being Criminal Complaint No. 661/1996 pending in the Court of Chief Judicial Magistrate, Amreli against the applicants for the offences under Section 406, 420 IPC is hereby quashed and set aside. Rule is made absolute accordingly.

[M.R. Shah, J.]

rmr.